



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0333]

RIN 1625-AA87

### Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent security zone for all navigable waters of the Lower Mississippi River (LMR) from mile marker (MM) 94 to MM 97, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to expedite the establishment and enforcement of the security zones to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rulemaking prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. This security zone will be enforced only as necessary by the COTP through a notice of enforcement published in the **Federal Register** and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0333 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2246, email [William.A.Stewart@uscg.mil](mailto:William.A.Stewart@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

AHP	Above Head of Passes
CFR	Code of Federal Regulations
COTP	Captain of the Port New Orleans
DHS	Department of Homeland Security
<i>FR</i>	<i>Federal Register</i>
LMR	Lower Mississippi River
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking
NOE	Notice of Enforcement
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

**II. Background Information and Regulatory History**

During the preceding several years, the COTP has published multiple temporary final rules (TFRs) to implement heightened security measures to protect waterfront facilities, visiting dignitaries, large volumes of festival participants, and/or vessels from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts within the LMR from MM 94 to MM 97, AHP, New Orleans, LA. The COTP expects that events requiring heightened protection will increase as New Orleans continues to hold popular annual events, like Mardi Gras and French Quarter Fest, as well as remains a top destination for events of national significance, such as sporting events and Navy Fleet Week.

The Coast Guard is establishing a permanent security zone for all navigable waters of the LMR from MM 94 to MM 97, AHP, New Orleans, LA to expedite the establishment and enforcement of the security zones. The enforcement of security zones within this area of the LMR is usually limited in duration, lasting a few hours to a few days for each waterway closure, creating minimal impact to vessel traffic. Moreover, this rule allows vessels to seek permission to enter the security zone from the COTP or a designated representative. The Coast Guard is issuing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Therefore, on May 7, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA” (87 FR 34607). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to establishing this permanent security zone. During the comment period that ended July 7, 2022, we received no comments.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that a permanent security zone, which can be enforced as necessary, will better allow the COTP to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rule prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published May 7, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a permanent security zone for all navigable waters of the Lower Mississippi River (LMR) from mile marker (MM) 94 to MM 97, Above Head of Passes (AHP), New Orleans, LA. This rule is necessary to expedite the establishment and enforcement of the security zones to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rule prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. This rule will be enforced only as necessary by the COTP through a notice of enforcement published in the **Federal Register** and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the security zone. While this zone will be permanent, it will only be enforced on an as needed basis where the COTP will limit the enforcement to areas specified in the notice of enforcement published in the *Federal Register*. Moreover, the Coast Guard will inform

the public of the enforcement area and period of this security zone through Vessel Traffic Services, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate, and the rule would allow vessels to seek permission to enter the security zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a security zone to protect the public in a designated area of the Mississippi River near New Orleans, LA for a limited number of days. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;  
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.846 to read as follows:

**§ 165.846 Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above  
Head of Passes, New Orleans, LA.**

(a) *Location.* The following area is a security zone: All navigable waters of Lower Mississippi River from mile marker (MM) 94 (29°57'32" N, 90°03'05" W) to MM 97 (29°55'19" N, 90°04'00" W), NAD83 datum, Above Head of Passes in New Orleans, LA.

(b) *Enforcement period.* The security zone established by this section will be enforced only upon notice of the Captain of the Port New Orleans (COTP). In accordance with subpart A of this part, for each enforcement of the security zone established under this section, the COTP will publish a notice of enforcement in the **Federal Register** as early as is practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in paragraph (d) of this section.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter the security zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the Captain of the Port New Orleans (COTP) in the enforcement of the security zone.

(2) To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365-2545 or VHF-FM Channel 16 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.



(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement period of this security zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: July 21, 2022.

K. K. Denning,  
Captain, U.S. Coast Guard,  
Captain of the Port New Orleans.

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